1952

File No. Local Bds II
52(K)

Legal Deptt
B **BRANCH** P.6(E)

K

Subject:— Rules under the Bombay Local Boards Act, 1923

File No. Local Boards II/52(K)

Gen. 194 e.

231-B

Legal Department.

The draft amendments to the Bombay Local Board Election Rules, 1952, proposed by the Director of Local Authorities, Southern Division, at pages 25 to 43 ante have been suitably revised and incorporated in a draft notification which will have to be issued under the proviso tosection 133 of the Bomba Local Boards Act, 1923, for inviting objections and suggestions. A few consequential amendments have also be included in the draft notification sent herewith.

2. Under clause (a) of section 133 of the Bombay Local Boards Act, 1923, (Bom.VI of 1923), the State Government has to prescribe the number of members to be elected by each Jonstituency. From the Local Self Government and Public Health Department, Circular No. 5928/33 dated the 9th May 1950 (Slip 'P') it appears that orders have been passed that as far as possible no constituency should be allotted less than two seats or more than four seats. The proposal now is to make use of the Ballot paper on the lines of the procedure followed in the Election to the Bombay Legislative Assembly and at the said time to make a provision that every elector shall have as many votes as there are members to be elected but that no elector shall give more than one vote to any one candidate. In the case of election to the House of the People where there was a reserved seat in the same Constituency in which there was a general seat, the procedure followed was to give a ballot paper to a voter and to give a second ballot ~~paper~~ paper to him bearing the same ~~same~~ serial number but with alphabet 'A' so that at the time of counting iftwo such ballot papers are found in

~~papers are found in~~ the same box one can be invalidated in view of the provision that no elector shall give more than one vote to any one candidate. In Local Board Elections, a Constituency consists of from 2 to 4 seats, that is to say each voter will be entitled to demand two to four ballot ~~papr~~ papers depending upon the number of seats to be filled. In order to fully implement the provision that no elector shall give more than one vote to any one candidate it will be necessary to provide in a multiple constituency that such ballot papers will bear the same serial ~~number~~ number but with alphabets 'A' 'B' 'C' 'D' etc., depending upon the number of seats. By this method if a voter gives more than one vote to the dame candidate such irregularity can be detected from the alphabets printed on the ballot paper. Otherwise, Government will have to pass orders making all constituencies as 'single' member constituencies.

3. To facilitate the work of scrutiny and to save time, the Department should have embodied the proposed amendments in a draft notification and sent two copies thereof to this Department as required by rule 65 read with rule 61 of the Secretariat Instructions.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 1596, dated the 31st January 1952.

SSM / 3/7/52.

Legal Department.

In the absence of any rule in the Bombay Local Boards Election Rules it would not be legally feasible for the Collector to issue any executive instruction as proposed by mim. If any emergency, such as riot, or open violence, or any natural calamity occurs it should be left to the good sense of the Presiding Officer whether it is impos ible to continue the poll or not. In any case the Presiding or Returning Officer has got no power to fix a date for a fresh poll. That will have to be done by the Collector under ~~the~~ rule 6, if necessity for doing so actually arises. If such power is to be given to Returning Officers, the rules will have to be amended.

for Additional Secretary to Government.

U.R. to L.S. G. & P.H.D., No. 4975, dated the 1st April 1952.

SSM / 3/6/56.

Legal Department.

As stated by the Local Self Government & Public Health Department there are no provisions in the Bombay Local Boards Act, 1923 or the Rules made thereunder corresponding to the those contained in the Representation of the People Act, 1951, in respect of the following matters, namely :-

(1) Prohibition of public meetings on election day (cf. section 126 of the Representation of the People Act, 1951);

(2) Removal of ballot-paper papers from polling stations to be an offence (cf.section 135),

(3) Other Other offences such as-

(i) fraudulently destroying lists, notices, etc.

(ii) supplying ballot papers without authority;

(iii) putting fraudulently in ballot boxes anything other than ballot papers;

(iv) destroying or interfering with ballot boxes etc. (cf. section 136);

(4) aiding or abetting of the above acts (cf. section 136(1)(g)).

2. The question referred referred to this Department for advice is whether action in respect of any of these matters can be taken under the Code of Criminal Procedure, 1898 or the Bombay Police Act, 1951.

3. The view taken by the Home Department that out of the matters referred to above only the holding of public meetings on the election day can be prohibited under section 144 of the Criminal Procedure Code or section 37(3) of the Bombay Police Act, 1951, is correct.

But as pointed out in this Department opinion No. 3326 dated the 29th February 1952 for issuing orders under section 144 of the Criminal Procedure Code or section 37(3) of the Police Act the circumstances specified in these sections must be present i.e. the orders proposed must be justified on the ~~ground~~ ground of disturbance of public tranquillity, etc.

4. As regards the other matters, there were no specific provisions under the ordinary law and therefore special provisions were made for the purposes of the elections to the Legislatures in the Representation of the People Act, 1951. Any of the acts referred to in these matters would not be punishable unless it amounts to an offence under the ordinary law. For taking penal action in such cases it will be necessary to amend the Local Boards Act suitably. (cf. Legal Department opinion No. 4420, dated the 24th March 1952).

Additional Deputy Secretary to Government.

U.O.R. to L.S.H. & P.H.D. No. 6057, dated the 21st April 1952.

SSM / 3/7/56.

Legal Department.

The view taken by Assistant Secretary L.S.G. & P.H.D. in his note at pp. 9-10 ante on all the points raised by the Collector of Surat in his letter at pp.1-3 ante, is correct.

2. The position stated at 'A' on p. 10 by the provisions of rule 40-A of the Bombay Local Boards Election Rules, 1932.

3. The view taken in para 7 of L.S.G. & P.H.D. note that the entire set of Local Boards Election Rules may be revised is correct. It appears that the definition of "reserved seat" has been inserted subsequently as sub-rule (2-A) in rule 2. In the said sub-rule it is stated that all other seats "shall be unreserved seats". If the use of ~~thi~~ this definition is made in rules 18, 19 and 21 they can be made much more precise.

4. It also appears that the form of nomination paper prescribed under rule 8 of the said rules requires revision. If more than one member of Schedule Castes or Scheduled Tribes have been nominated as candidates in the constituency in which a seat is reserved for a Scheduled Caste or Scheduled Tribe, the other stands the chance of being elected in the general seat if he gets more number of votes than the candidate nominated for general seat. The statement made in the form of nomination paper "name of Schedule Castes or Scheduled Tribes, if the candidate is contesting a reserved seat" is not quite

~~is not quite~~ appropriate as he is at liberty under the rules to stand to contest a general seat.

for Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 5895, Dated the 19th April 1952.

SSM / 5/7/56.